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Supreme Court of the United States

October Term, 1969

No. 845

WOODROW YOKUM,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BONN BROWN
Elkins, West Virginia

MILFORD L. GIBSON
Elkins, West Virginia

Counsel for Petitioner

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JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 12,740

UNITED STATES OF AMERICA,

Appellee,

v.

WOODROW YOKUM,

Appellant.

Appeal from the United States District Court for the Northern District of West Virginia.

This cause came on to be heard on the record from the United States District Court for the Northern District of West Virginia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is reversed as to Count 3 of the Indictment and affirmed as to the remaining 9 Counts thereof.

SAMUEL W. PHILLIPS
Clerk

Note: This Order has not been received by counsel or the U.S. Clerk's Office for the Northern District of West Virginia, but the contents thereof has been verified by phone.

OPINION OF THE UNITED STATES COURT OF APPEALS

CRAVEN, Circuit Judge:

Defendant, Woodrow Yokum, was convicted on 10 counts of an 11 count indictment charging him with interstate transportation of stolen motor vehicles, 18 USC 2312; unlawful sale of property stolen from the U.S.; 18 USC 641; and transportation of property obtained by fraud from the U.S., 18 USC 2314. He was sentenced to 3 years on each of 6 counts and to 4 years on each of 4 counts—the sentences to run concurrently. We reverse his conviction on count 3 and affirm on the remaining nine counts.

Yokum was Highway Supervisor for the West Virginia State Road Commission. In this capacity he obtained surplus federal property for the state road commission. The proper procedure for obtaining such property was for the West Virginia State Road Commission to ask the Bureau of Public Roads at Hagerstown, Maryland, an agency of the United States, to order the surplus equipment for the state agency. If the Bureau determined that the state agency was eligible for the surplus equipment requested, the Bureau would prepare multiple copies of Standard Form 122. One would be sent to the appropriate regional office of the General Services Administration, which shared responsibility for distribution of surplus property. Copies would also be sent to the state agency, which would then send or take Form 122 to the appropriate regional GSA office. GSA would then, after resolving priority conflicts between the state agency and any federal agency interested in acquiring the property, note its approval on the form. Having obtained endorsement from both the Bureau of Public Roads and GSA, the state agency would then take the Form 122 to the federal agency holding the surplus property. There, by another procedure not relevant here,

the property would be released to the state. At this point the state agency would, on the Form 122 sent them by the Bureau of Public Roads, add an endorsement to the effect that the requested equipment had been received and then return the form to the Bureau of Public Roads at Hagerstown, Maryland. Then the Bureau of Public Roads would bill the state agency for the equipment received. During the years 1964 through 1967 the Bureau of Public Roads received 170 requests for surplus property from the West Virginia State Road Commission; these requests were processed by it according to the procedure outlined above.

Yokum apparently discovered that there was no cross-check between GSA and the Bureau of Public Roads. By omitting the Bureau of Public Roads from the requisitioning procedure he got property and avoided having West Virginia billed for it. GSA sent no bills, as billing was the responsibility of the Bureau of Public Roads at Hagerstown, Maryland. To obtain the property involved in eight counts of the indictment, Yokum caused 122 Forms to be filled out listing the ordering agency as the "U.S. Bureau of Public Roads" at P.O. Box 410, Buckhannon, West Virginia. There is no such agency, and the address given is that of Yokum's office at the State Road Commission. In the blank provided on Form 122 for a signature indicating approval by the ordering agency Yokum signed his name listing his title as "Hiway Supervisor." The proper authority to approve such requests was the Bureau of Public Roads at Hagerstown, Maryland. Yokum was not one of its employees, and that agency had no agent with the title "Hiway Supervisor."

Yokum questions the sufficiency of the evidence to sustain his convictions. In six counts of the indictment he was charged with interstate transportation of stolen motor vehicles in violation of 18 U.S.C.A. § 2312. Considering

the evidence in the light most favorable to the government, as we must, *United States* v. *Costanzo,* 395 F.2d 441, 445 (4th Cir. 1968), we find it sufficient to sustain these convictions.

In all six of these counts the vehicles were obtained by Forms 122 bearing Yokum's signature specifying the fictitious "U.S. Bureau of Public Roads" as the ordering agency. There was evidence that the State Road Commission received none of the vehicles. The title source documents on all but one of the six were conspicuously absent from the files of the West Virginia Department of Motor Vehicles. Two of them were titled in Yokum's name, one in the name of his wife's first cousin, two in the names of his friends, and one, a fire truck, was loaned by Yokum to a fire department in his home town. We think this evidence was sufficient to establish that the vehicles were stolen and that Yokum had knowledge that they were stolen. The evidence further tended to show that all six of the vehicles were taken across state lines by Yokum or at his direction. More is not needed to sustain these convictions. *United States* v. *Costanzo, supra; Scott* v. *United States,* 255 F.2d 18 (4th Cir. 1958).

One count of the indictment charged Yokum with knowingly transporting stolen property with a value of more than $5,000 in interstate commerce in violations of 18 U.S.C.A. § 2314. The property, 1,000 pairs of binoculars, was found on a farm in West Virginia belonging to Yokum's uncle. Evidence sufficient to sustain the conviction, *Periera* v. *United States,* 347 U.S. 1, 98 L.Ed. 435, 74 S.Ct. 258 (1954), was that the binoculars were obtained by a Form 122, which Yokum caused to be executed, and which bore his signature signifying approval by the nonexistent "U.S. Bureau of Public Roads," and further that the binoculars were transported across state lines by State

Road Commission employees at Yokum's direction. The State Road Commission had no record of ever having received the binoculars, which were valued at $165 per pair.

Yokum was charged with three counts involving violations of 18 U.S.C.A. § 641. The statute proscribes (1) the sale of property (2) belonging to the United States (3) without authority (4) knowing at the time of the sale that the property belonged to the United States. Violation of the statute is made a felony if the property is valued over $100. *See Souza* v. *United States,* 304 F.2d 274 (9th Cir. 1962). Evidence sufficient to sustain the first of these three counts was that a 1962 Chrysler Imperial was obtained by Yokum via a Form 122 which designated the fictitious "U.S. Bureau of Public Roads" as the acquiring agency, and, in addition that he sold the car to a Beverly, West Virginia, used auto dealer for $600.

The evidence as to the second count (count No. 3 of the indictment), considered in the light most favorable to the government, tends to show that a 1953 International Wrecker Truck was obtained by Yokum on a legitimate Form 122, that the title was released by the government to the State Road Commission, and that the government was paid for the truck. The 122 Form did contain a discrepancy, in that it described the truck as a dump truck rather than as a wrecker. The discrepancy probably originated in Yokum's request to the Bureau of Public Roads for the truck. However, the evidence, particularly the fact that the serial numbers and the Marine Corps numbers identifying the vehicle were correctly recorded on all of the papers and forms passing between the offices of the various federal agencies, tends to show that title to the truck passed to the state and that the federal government received its due. We are not unaware that the evidence also tended to show that title to the truck somehow came to Yokum, and that he

sold the truck to a West Virginia body shop and kept the proceeds. Yokum may have cheated West Virginia. An esesential element of the offense, however, is that the property sold was the property of the United States, *see Souza* v. *United States, supra,* and that element was not established. We reverse Yokum's conviction on count 3.

Finally, Yokum was charged with the sale of a 1951 Ward La France fire truck in violation of 18 U.S.C.A. § 641. The government produced evidence consisting of various interagency form communications between the Capitol Wing of the Civil Air Patrol and the Property Disposal Officer at Ft. Belvoir, Virginia. The forms show that this truck was authorized to be stripped of its useable equipment and that the remains were sold for scrap. However, evidence was also produced showing that a Ward La France fire truck with the same serial number and the same engine number titled as a 1957 model was sold by Yokum for $5,000 to a fire department near his home. There was also evidence that the truck was shipped to the Civil Air Patrol "attention Col. Woody Yokum" by the government contractor who had reported it as surplus property. Furthermore, the United States Government Certificate of Release, issued on the fire truck the equivalent of a certificate of title, bore the same certificate number as one of ten of such certificates obtained by Yokum from the Property Disposal Officer at Ft. Belvoir, Virginia. We think there was sufficient evidence to sustain this conviction.

We have carefully considered Yokum's other contentions of error and find them to be without merit.

AFFIRMED AS TO NINE COUNTS.
REVERSED AS TO COUNT 3.

MOTION FOR RETURN OF PROPERTY

Now comes the Defendant, Woodrow Yokum, in person and by Bonn Brown and Milford L. Gibson, his counsel, and moves the Court for the entry of an Order directing the United States of America to return to the Defendant all of his property and the property of the State Road Commission of West Virginia, as well as all other property which was seized and confiscated by it in the investigation and preparation of its charges against him, with the exception of the items specified in the Counts of the Indictment now pending against him in this Court.

Defendant also moves that such Order require (A) the delivery of such property to the exact location from which it was taken; (B) that all property be returned in as good a state of repair as it was when seized; and (C) that the quantity of property so taken be strictly accounted for by the United States of America.

WOODROW YOKUM
By Counsel

/s/ BONN BROWN
Elkins, West Virginia

/s/ MILFORD L. GIBSON
Elkins, West Virginia

Counsel for Defendant

MOTION FOR BILL OF PARTICULARS

Now comes the Defendant, Woodrow Yokum, in person and by Bonn Brown and Milford L. Gibson, his counsel and advises the Court that the Defendant and counsel are not sufficiently advised as to the nature of the charges against him, as set out Counts I to XI inclusive of the Indictment returned herein to enable him to plead to any of said Counts in the Indictment; therefore, the Defendant

moves that the United States of America be required to furnish the Defendant pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure a Bill of Particulars setting forth in detail the following:

(1.) The nature of the charge against him in each Count of the Indictment, as well as a disclosure of the identity of the items of written or printed evidence upon which said Indictment counts are based.

(2.) That it produce for copying and examination the items of written evidence involved in the proof of the facts in each of the Indictment Counts, as well as any and all written statements made by the Defendant to investigative officers and copies of investigative reports in the possession of the United States of America relating to the items charged in the Indictment.

(3.) That the prosecution produce for examination and copying the minutes or notes of the Grand Jury, including any recorded or reported evidence taken, as well as the log of witnesses who appeared before the Grand Jury at the time of the hearing upon which this Indictment was returned.

(4.) That the United States produce for photo copying and examination any and all forms or documents allegedly signed or executed by the Defendant in the performance of the acts charged in the respective Counts of the Indictment.

WOODROW YOKUM
By Counsel

/s/ BONN BROWN
Elkins, West Virginia

/s/ MILFORD L. GIBSON
Elkins, West Virginia

Counsel for Defendant

MOTION FOR DISCOVERY AND INSPECTION

Now comes the Defendant, Woodrow Yokum, in person and by Bonn Brown and Milford L. Gibson, his counsel, and pursuant to Rule No. 16 of the Federal Rules of Criminal Procedure, before the Defendant has entered a plea to the Indictment returned against him, moves the Court for the entry of an Order directing the United States of America to produce and to permit the Defendant to inspect and copy or photograph the following documents or records pertaining to the charges against him:

(A.) Standard Form #122 "Excess Property Transfer Order" of General Services Administration relating to the transfer of 1,000 pair of binoculars as charged in Count No. IV of the Indictment.

(B.) Form #97 "Government Release Form for Motor Vehicle" relative to 1962 Chevrolet Corvair Convertible, Serial No. 20967W258726, as charged in Count No. V of Indictment.

(C.) Form #97 "Government Release Form of Motor Vehicle" relative to 1963 Pontiac four-door sedan, Serial No. 363-W-40273, as specified in Count No. VI of the Indictment.

(D.) Form #97 "Government Release Form for Motor Vehicle" relative to 1962 Pontiac Bonneville Convertible, Serial No. 862-W-10701 as mentioned in Count No. VII of the Indictment.

(E.) Form #97 "Government Release Form for Motor Vehicle" regarding 1951 Ward LaFrance Fire Truck,

Engine No. 80457 as referred to in Count No. IX of the Indictment.

WOODROW YOKUM
By Counsel

/s/ BONN BROWN
Elkins, West Virginia

/s/ MILFORD L. GIBSON
Elkins, West Virginia

Counsel for Defendant

ORDER

This 4th day of March, 1968, comes the United States of America by John H. Kamlowsky, United States Attorney for the Northern District of West Virginia, and comes the Defendant, Woodrow Yokum, in person and by Bonn Brown and Miltord L. Gibson, his counsel. Thereupon counsel for Defendant advised the Court that in compliance with Defendant's motion for discovery and inspection of documents under Rule 16 of the Rules of Criminal Procedure the Government had voluntarily furnished all of the items requested therein except the "Government Release Form for Motor Vehicle" that were requested in Items B, C, D and E of the Defendant's motion. The United States Attorney advised that the Government had and would furnish the Form 97 for Item E, but that these forms for Items B, C and D had apparently been lost or misplaced and could not be located by the West Virginia Department of Motor Vehicles. He further informed the Court that the documents given to counsel for Defendant constituted all documents in the possession of the Government and that if additional documents were forthcoming the same would be furnished to defense counsel without requiring further motion.

The United States Attorney then stated that he intended to file a motion under Rule 16(c) requesting the Defendant to produce records, papers and documents that he will introduce in the defense of this action and advised the Court that he would prepare and file such motion as of this date if permitted by the Court, which permission was duly granted.

Counsel for Defendant requested the entry of an Order requiring the Government to produce for examination by defense counsel the minutes or notes of the Grand Jury that returned the instant indictment, as well as a list of witnesses who appeared before the Grand Jury, this being information requested at Item 3 of the Defendant's motion for bill of particulars. The United States Attroney resisted this motion and after argument of counsel it is ordered that the Clerk do furnish a list of the Grand Jurors who were summoned, setting out the ones who were impaneled and sworn and the number who concurred in the finding of this indictment; that after this information is made available to Defendant then he shall have a one-week period thereafter within which to furnish any authorities he may desire the Court to consider relative to the qualification of the Grand Jury. The Court further directs the attention of both counsel to the case of United States of America v. Costello, 351 U.S. Reports 359.

Thereupon counsel discussed with the Court questions that were pertinent to the Defendant's motion for the return of the property in the possession of the Government that was not embraced within the indictment and this matter was taken under advisement by the Court. It is ordered that the matter of the return of the personal property and the various issues arising therefrom be given additional attention by the parties, as well as the question of the Government's use of the real estate belonging to defendant

and his family. In this connection the Court directs the attention of counsel to the case of State Penitentiary of Maryland v. Haden, 378 U.S. Reports 294.

It is further ordered that any new motions of either party hereto shall be filed by March 25, 1968, and that Defendant shall by that date file all motions deemed appropriate to his defense.

ENTER: This ..... day of ....., 1968.

_____

Judge

MOTION FOR INSPECTION AND DISCOVERY

This 4th day of March, 1968, comes the United States of America, by John H. Kamlowsky, United States Attorney for the Northern Judicial District of West Virginia, and moves the Court that, under the provisions of Rule 16(c), Federal Rules of Criminal Procedure, the defendant provide the United States of America with any and all papers, records, documents and titles, or copies or portions thereof, which the defendant intends to produce at the trial of this matter.

UNITED STATES OF AMERICA

By: /s/ JOHN H. KAMLOWSKY
United States Attorney

MOTION

This day comes the Defendant, Woodrow Yokum, by Bonn Brown and Milford L. Gibson, his counsel, and resists the motion of the United States of America for inspection and discovery under the provisions of Rule 16(c)

of the Federal Rules of Criminal Procedure upon the following grounds:

1. The granting of Defendant's motion for discovery and inspection under Rule 16 and the furnishing of documents, etc., thereunder was not conditioned upon Defendant furnishing any documents or information to the Government so as to place this action within the scope of Rule 16(c) and does not meet the prerequisites to require the making of this information available from the Defendant.

2. To require the Defendant to comply with the Government's request under Rule 16(c) would deny him of his right to remain silent, would violate his privilege against self-incrimination and would deprive him of the protection guaranteed him by the Fifth Amendment of the United States Constitution.

3. Where the liberty of the accused is at stake such as in this instance, such rights as are given him by Constitution and by Statute cannot be taken away from him by procedural rules of Court.

WOODROW YOKUM
By Counsel for Defendant

ORDER

On the 15th of April, 1968, came the United States of America, by John H. Kamlowsky, United States Attorney for the Northern Judicial District of West Virginia, and came the defendant, WOODROW YOKUM, in person and with his counsel, Bonn Brown and Milford L. Gibson. Argument was then had on the motion of the United States of America for the production of documents by the defendant under the provisions of rule 16

(c), F.R. Crim. P., defendant resisting said motion for the reason set out in defendant's written answer. The Court was then advised by the United States that, if the defendant did not produce said documents, the United States of America would not furnish the defendant with any other documents, records or papers that are presently or will come into the government's possession, including the Form 97 previously requested, unless so Ordered by the Court, to which the defendant objected. The Court then advised that it would take this matter under consideration and that the United States of America should produce to the Court, in camera, any records, documents or papers it intends to produce in the trial of this matter, the copies of which have not already been furnished to the defendant. The United States then moved that arraignment be had in this matter and the Court

ORDERED that arraignment be held on April 18, 1968, at 1:30 o'clock, P.M., in the United States District Court, at Elkins, West, Virginia.

ENTER: May 21, 1968

/s/ ROBERT E. MAXWELL
United States District Judge

ORDER

On the 18th day of April, 1968, came the United States of America, by John Marshall, III, Assistant United States Attorney for the Northern Judicial District of West Virginia, and came the defendant, WOODROW YOKUM, in person and with his counsel, Bonn Brown and Milford L. Gibson, for arraignment to Indictment No. 67-91-E. Whereupon, counsel for the defendant waived reading of each count of the indictment and said defendant entered a plea of not guilty to Counts I, II, III, IV, V, VI,

VII, VIII, IX, X and XI of said Indictment. Upon the plea of not guilty, the Government moved that a trial date be assigned and the Court

ORDERED this matter be, and the same is hereby, set for trial on May 20, 1968, at 1:30 o'clock, P.M., in the United States District Court at Elkins, West Virginia.

ENTER: May 21, 1968

/s/ ROBERT E. MAXWELL
United States District Judge

MOTION FOR SUPPRESSION OF EVIDENCE AND RETURN OF PROPERTY

Now comes the Defendant, Woodrow Yokum, in person and by his attorneys, Bonn Brown and Milford L. Gibson, and moved that property described in Count 4 of the indictment, described as 1000 binoculars, be returned to the Defendant and that this evidence be suppressed on the ground under Rule 41(e) of Federal Criminal Procedure that this property was obtained under unlawful search and seizure in that the search warrant issued by Henry K. Higginbotham was based on an insufficient affidavit.

Further that the property seized is not that described in the search warrant. The search warrant sets forth the property described as follows: "That there is now concealed certain property, namely, one Trailer Van manufactured by Gramm Trailer Company, Delphos, Ohio, S/N8528576681, U. S. Navy Registration 97-03770, said trailer contains certain property." The return and inventory shows that there were 17 listed pages of property none of which was described in this search warrant, including the 1000 pairs of binoculars. Therefore the Defendant moves that this evidence be suppressed and the property returned to him.

The Defendant also moved that the property set out under Count 8 of the indictment, consisting of 11,440 feet of 16 gauge one inch copper tubing in lengths of 20 feet each be returned to the Defendant and this evidence be suppressed on Rule 41(e) of the Federal Criminal procedure on the grounds that the affidavit for the issuance of the search warrant was not in the form prescribed by the statute and rule; and,

That the property seized is not that described in the search warrant and the warrant does not sufficiently describe the property to be seized. The warrant says, "That there is now concealed certain property namely one portable generator, Serial No. 1620250, numerous boxes and crates containing miscellaneous property and other property." Therefore the Defendant moves that this evidence be suppressed and returned to him, all in accordance with Rule 41(e).

WOODROW YOKUM, *Defendant*
By Counsel

/s/ MILFORD L. GIBSON
P.O. Box 266
Elkins, West Va. 26241

/s/ BONN BROWN
P.O. Box 511
Elkins, West Va. 26241

Counsel for Defendant.

MOTION FOR NEW TRIAL

Now comes the Defendant, Woodrow Yokum, pursuant to Rule 33 of the Rules of Criminal Procedure and moves the Court for a new trial, assigning the following grounds in support thereof.

1. The Grand Jury which returned the indictment after hearing a part of the evidence was allowed to adjourn for a period of approximately two weeks and then to return to receive additional evidence and then to deliberate on the indictment, all of which action was given statewide publicity.

2. The Petit Jury selected to try this case was chosen from a panel that was not representative of a cross section of the area in which the trial was held.

3. The Court committed error in denying Defendant's request to be heard in chambers upon preliminary motions and matters which normally would be heard out of the presence of the jury.

4. The Court erred in denying Defendant's motion to suppress evidence relating to Count IV of the indictment based upon the illegality of the search warrant.

5. The Court erred in not admonishing the trial jury to ignore the newspaper, radio and television broadcasts relating to the progress of the trial.

6. The pre-indictment and pre-trial, as well as the trial publicity, available through news media created an atmosphere which so prejudiced the public that the Defendant could not get a fair trial.

7. The Court erred in failing to grant Defendant a judgment of acquittal as to all of the counts against him which were not proven by the Government, this motion having been made at the conclusion of the Government's case and again at the conclusion of all of the evidence.

8. The argument of Defendant's motion for judgment of acquittal received widespread and inaccurate newspaper, radio and television publicity and the Court's ruling there-

on made out of the presence of the jury was also widely publicized.

9. The Court erred in his charge to the jury in the following respects:

A. The charge did not cover the fact that circumstantial evidence should be viewed with caution.

B. The charge relating to Count IV of the indictment improperly assumed that the possession of the property immediately after the alleged taking was in the Defendant when in fact the evidence shows that he was not in possession of the property until over one year after the alleged date of taking.

C. The charge did not advise the jury to ignore statements of the press, television or other news media in reaching their verdict.

D. By including in the charge a statement from the statute that "any property made or being made under contract for the United States or any department or agency thereof" should be considered as Government property, which in this instance would cause the jury to believe that the statute applied to such property regardless of who had it in possession.

E. The Court's charge did not confine the jury's deliberation to consideration of elements of a Federal crime but was so general as to permit speculation based upon the inadequacies, etc., of State records and the violation of State statutes by the Defendant and others.

10. The Court committed error in admitting into evidence the Xerox copy of an alleged letter from the Defendant to Elmer West dated October 17, 1966, and in permitting the United States Attorney to use the same as an

integral part of proof of guilt in his closing argument to the jury.

11. The statement by the United States Attorney in final summation, "This case is not over. The F.B.I. is still investigating," was prejudicial to the Defendant and improper.

12. The Government in the presentation of its case failed to prove any Federal offense committed on behalf of the Defendant and specifically did not show the existence of criminal intent or knowledge on his behalf at the time of the alleged wrongdoing.

13. The title to all property and vehicles allegedy transferred, transported or sold had been transferred by the Government prior to any transportation or sale.

14. There is no showing of any acts of fraud committed by the Defendant nor of any profit or reward being received by him from his alleged actions.

WOODROW YOKUM, *Defendant*
By Counsel

/s/ BONN BROWN
48½ Randolph Avenue
Elkins, West Virginia
Counsel for Defendant

/s/ MILFORD L. GIBSON
Box 266
Elkins, West Virginia
Counsel for Defendant

ORDER

On the 8th day of July, 1968, came the defendant, WOODROW YOKUM, in person and with his counsel,

Bonn Brown and Milford L. Gibson. Milford L. Gibson, co-counsel for said defendant, advised the Court that the defendant objected to the letter introduced into evidence as Government's Exhibit No. 68 for the reason that the defense was not supplied with a copy of such Exhibit and the defense was of the opinion that they were entitled to such under the provisions of Rule 16 F.R.C.P. The Court then advised the parties that each had until July 22nd to present any additional matters concerning said objection as they deemed material.

After due consideration of the arguments on the Motions of the defendant previously had, and nothing being further offered in evidence on the objection as to said letter, the Court does hereby

ORDER that the defendant's Motion For New Trial and Motion For Judgment Of Acquittal are overruled for the reasons stated in open court, to which action of the Court the defendant objects and excepts.

ENTER: JUL 9 1968

/s/ ROBERT E. MAXWELL
United States District Judge

ORDER

On this 5th day of August, 1968 came the attorney for the government and the defendant appeared in person and[1] by Bonn Brown and Milford Gibson, counsel.

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[1] Insert "by [name of counsel], counsel" or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2] Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. [3] Insert "in count(s) number " if re-

IT IS ADJUDGED that the defendant upon his plea of[2] not guilty to Counts 1, 2, 3, 4, 5, 6, 7, 9, 10 and 11 and a finding of guilty by a jury has been convicted of the offenses of: Interstate Transportation of a Stolen Motor Vehicle (T. 18, Section 2312, USC) on counts 1, 5, 6, 7, 10 and 11; Transportation of Stolen Property in Interstate Commerce (T. 18, Section 2314, USC) on count 4; Theft of Government Property (T. 18, Section 641, USC) on counts 2, 3 and 9 as charged[3] in Indictment No. 67-91-E and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4] THREE (3) YEARS EACH on counts 1, 5, 6, 7, 10 and 11; FOUR (4) YEARS EACH on counts 2, 3, 4 and 9, and that all of said sentences are to run concurrent with each other and the Court further specifies that Woodrow Yokum may become eligible for parole at such time as the Board of Parole may determine under the provisions of Title 18, Section 4208(a)(2), USC.

IT IS ADJUDGED that[5]

IT IS ORDERED that the Clerk deliver a certified copy of

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quired. [4] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. [5] Enter any order with respect to suspension and probation. [6] For use of Court to recommend a particular institution.

this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ ROBERT E. MAXWELL
United States District Judge

The Court recommends commitment to[6]

/s/ THOMAS F. STAFFORD,
Clerk.

GOVERNMENT'S EXHIBIT NO. 7

STANDARD FORM 97-A SEPTEMBER 1961 EDITION PRESCRIBED BY GSA REG 1-V-306.01 97-204-01	AGENCY RECORD COPY OF THE UNITED STATES GOVERNMENT CERTIFICATE OF RELEASE OF A MOTOR VEHICLE	CERTIFICATE NO. B -06417

The undersigned DEPARTMENT or AGENCY of the UNITED STATES GOVERNMENT certifies that the motor vehicle described herein, the property of the UNITED STATES GOVERNMENT, has been transferred this 21st day of February 19 66, to the Transferee designated herein; and that this is the first transfer of such vehicle in ordinary trade and commerce subsequent to acquisition thereof by the UNITED STATES GOVERNMENT.

TRANSFEREE (Name of dealer, individual, etc.)				ADDRESS OF TRANSFEREE	
The State Rd. Commission of W. Va.				Equipment Division Buckhannon, West Virginia	
MAKE OF VEHICLE	YEAR	SERIES OR MODEL		ENGINE NO.	MANUFACTURER'S SERIAL NO.
Chrysler					9123191809
TYPE OF VEHICLE*				KIND OF BODY	
Automobile		USA#1J1684		Sedan	
NUMBER OF CYLINDERS	HP. (SAE)	FUEL	NUMBER OF AXLES	NUMBER OF DUAL WHEELS	TIRES
		Gasoline			☐ SOLID ☒ PNEUMATIC
WEIGHT (Shipping)		NO. OF PASSENGERS	WHEELBASE	MANUFACTURER'S RATED CAPACITY	SALE PRICE
TRANSFEROR (Accountable office; i.e., department or agency; subunits and address)					
Property Disposal Office, Bldg. S-1976, Meade Rd., Ft. Belvoir, Va.					
SIGNATURE MORDEN H. FAIRFAX				TITLE Property Disposal Officer	

GOVERNMENT'S EXHIBIT NO. 5

STANDARD FORM 122
REVISED ... 1961
PRESCRIBED BY
GSA REG. ...

TRANSFER ORDER
EXCESS PERSONAL PROPERTY

REQ. NO. WV-33-66
2. DATE Feb 16, 1966

3. TO: GENERAL SERVICES ADMINISTRATION
UTILIZATION AND DISPOSAL SERVICE
PERSONAL PROPERTY DIVISION
7th & D Streets, SW
Washington, D. C. 20407

4. ORDERING AGENCY (Full name and address)
U.S. Bureau of Public Roads
P.O. Box 410
Buckhannon, West Virginia 26201

5. HOLDING AGENCY (Name and address)
Property Disposal Officer
Fort Belvoir, Virginia

6. SHIP TO (Consignee and destination)
The State Road Commission of W. Va.
Equipment Division
Buckhannon, West Virginia

7. LOCATION OF PROPERTY
Same as above.

8. SHIPPING INSTRUCTIONS
The State Road Commissionof W. Va. will transport items with their own facilities. Advise when ready.

9. ORDERING AGENCY APPROVAL
SIGNATURE [signature] DATE 2/16/66
TITLE Hiway Supervisor

10. APPROPRIATION SYMBOL AND TITLE
13-20x8102(02)

11. ALLOTMENT

12. GOVERNMENT B/L NO.

13. PROPERTY ORDERED

GSA OR HOLDING AGENCY NO. (a)	ITEM NO. (b)	DESCRIPTION (Include noun name, FSC Group and Class, Condition Code and, if available, Federal Stock Number) (c)	UNIT (d)	QUANTITY (e)	ACQUISITION COST UNIT (f)	ACQUISITION COST TOTAL (g)	TOTAL FAIR VALUE (If any) (h)
V-9944	1	Chrysler sedan, 4 dr USA#1J1684	ea	1	-	$2875.00	
		Exc. Rpt. A2604-6046-L	(146)				

Pgd. 2-21-68 D.S.

Govt.
Ex. No. 5
Identified 5-21-68
Filed 5-21-68
Case No. Cr. 67-91-E

14. GSA APPROVAL
SIGNATURE [signature] TITLE Personal Property Utilization Officer DATE FEB 16

FOR GSH USE ONLY	AGENCY AND LOCATION: AGENCY	STATE			FSC	CONDITION	SOURCE CODE

DISTRICT COURT'S CHARGE TO JURY

Although you as jurors are the sole judges of the facts, you are duty bound to follow the law as stated in the instructions of the Court and apply the law so given to the facts as you find them from the evidence before you.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Neither are you to be concerned with the wisdom of any rule of law. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the indictment and the denial made by the not guilty plea of the defendant. You are to perform this duty without bias or prejudice as to any party. The law does not permit jurors to be governed by sympathy, prejudice, or public opinion. The defendant and the public expect that you will carefully and impartially consider all of the evidence, follow the law stated by the Court and reach a just verdict, regardless of the consequences.

The law presumes a defendant to be innocent of crime. Thus a defendant, although accused, begins the trial with a clean slate, that is, with no evidence against him. And the law permits nothing but legal evidence before the jury to be considered in support of any charge against a defendant.

So, the presumption of innocence alone is sufficient to acquit a defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt from all of the evidence in the case.

A reasonable doubt is a fair doubt based upon reason

and common sense and arising from the state of the evidence. It is rerely possible to prove anything to an absolute certainty. Proof beyond a reasonable doubt is established if the evidence is such as you would be willing to rely and act upon in the most important of your own affairs. A defendant is not to be convicted on mere suspicion or conjecture.

A reasonable doubt exists in any case when after careful and impartial consideration of all of the evidence, the jurors do not feel convinced to a moral certainty that a defendant is guilty of the charge.

An indictment is but a formal method of accusing a defendant of a crime. It is not evidence of any kind against a defendant and does not create any presumption or permit any inference of guilt.

There are two types of evidence from which a jury may properly find a defendant guilty of an offense. One is direct evidence, such as the testimony of an eye witness. The other is circumstantial evidence, the proof of a chain of circumstances pointing to the commission of the offense.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but requires that before convicting a defendant, the jury be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case. Statements and arguments of counsel are not evidence in the case.

The evidence in this case consists of the sworn testimony of the witnesses, all exhibits which have been received in evidence, all facts which have been admitted, and all applicable presumptions stated in these instructions. Any evidence as to which an objection was sustained by the Court, and any evidence ordered stricken by the Court, must be entirely disregarded.

You are to consider only the evidence in the case. But in your consideration of the evidence you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw from the facts which you find have been proved, such reasonable inferences as seem justified in the light of your own experience.

An inference is a deduction or conclusion which reason and common sense lead the jury to draw from facts which have been proved.

A Presumption is a conclusion which the law requires the jury to make from particular facts, in the absence of convincing evidence to the contrary.

A presumption continues in effect until overcome or outweighed by evidence to the contrary; but unless so outweighed the jury are bound to find in accordance with the presumption.

Unless and until outweighed by evidence to the contrary, the law presumes that a person is innocent of crime or wrong; that a witness speaks the truth; that official duty has been regularly performed; that private transacions have been fair and regular; that the ordinary course of business has been followed; that things have happened according to the ordinary course of nature and the ordinary habits of life; and that the law has been obeyed.

Six counts of the indictment in this case charge the violation of section 2312 of Title 18 of the United States Code, and section 2 of Title 18 of the United States Code.

Section 2312 of Title 18 of the United States Code provides in part that:

> "Whoever transports in interstate commerce a motor vehicle knowing the same to have been stolen, shall be guilty of an offense against the laws of the United States."

It is charged in Count 1 of the indictment in this case that on or about the 16th day of February 1966, Woodrow Yokum did transport a stolen motor vehicle, that is, one black 1962 model 4 door Chrysler Imperial Sedan, vehicle identification number 9123191809, from Fort Belvoir, State of Virginia, to Randolph County, State of West Virginia, in the Northern District of West Virginia, and he then knew the motor vehicle to have been stolen.

Count 5 of the indictment in this case charges that on or about the 14th day of June, 1966, Woodrow Yokum did willfully and unlawfully transport a stolen motor vehicle, that is, one 1962 Chevrolet Corvair Convertible, serial number 20967W258726, from Washington, District of Columbia, to Randolph County, State of West Virginia, in the Northern District of West Virginia, and he then knew said motor vehicle to have been stolen.

Count 6 of the indictment in this case charges that on or about the 14th day of June, 1966, Woodrow Yokum did willfully and unlawfully transport a stolen motor vehicle, that is, one 1963 Pontiac 4-door Sedan, serial number, 363-W-40273, from Washington, District of Columbia, to Randolph County, State of West Virginia, and he then knew said motor vehicle to have been stolen.

Count 7 of the indictment in this case charges that on or about the 14th day of June, 1966, Woodrow Yokum did willfully and unlawfully transport a stolen motor vehicle, that is, one 1962 Pontiac Bonneville Convertible, serial number 862W10701, from Washington, District of Columbia, to Randolph County, State of West Virginia, in the Northern District of West Virginia, and he then knew said motor vehicle to have been stolen.

Count 10 of the indictment in this case charges that on or about the 30th day of June, 1966, Woodrow Yokum did willfully and unlawfully transport a stolen motor ve-

hicle, that is, one 1953 FWD Fire Truck, serial number 400881, from Norfolk, State of Virginia, to Randolph County, State of West Virginia, in the Northern District of West Virginia, and he then knew said motor vehicle to have been stolen.

Count 11 of the indictment in this case charges than on or about the 4th day of October, 1965, Woodrow Yokum did willfully and unlawfully, transport a stolen motor vehicle, that is, one 1958 Chrysler 4-door Sedan, vehicle identification number LY1-9744, from Alexandria, State of Virginia, to Philippi, State of West Virginia, in the Northern District of West Virginia, and he then knew said motor vehicle to have been stolen.

The portion of the statute that I have read to you, involving the six counts of the indictment that I have just referred to, is known as the National Motor Vehicle Theft Act.

The term "interstate" as used in the statute, and in the six counts of the indictment in this case, means "commerce between one state and another state."

The word "stolen" as used in the statute, and in the six counts of the indictment in this case which allege the crime of interstate transportation of stolen motor vehicles, includes all felonious takings of motor vehicles, including any wrongful or dishonest taking whereby a person obtains property belonging to another with the intent to deprive the owner of the rights and benefits of ownership.

Two essential elements are required to be proved in order to establish the six offenses of interstate transportation of stolen motor vehicles charged in the indictment:

(1) The act or acts of transporting or causing to be be transported in interstate commerce the stolen motor vehicles as charged; and

(2) Doing such act or acts willfully and with knowledge that the respective motor vehicles have been stolen.

Such offense has been completed when the two elements just stated are proved.

As stated before, the burden is upon the prosecution to prove beyond all reasonable doubt every essential element of the crime charged, in each of the six counts of this indictment that allege a violation of the federal law relative to interstate transportation of stolen motor vehicles.

Possession of property recently stolen, if not satisfactorily explained, is a circumstance from which the jury may reasonably draw the inference and find that the person in possession knew the property had been stolen.

Possession in one state of property recently stolen in another state, if not satisfactorily explained, is a circumstance from which the jury may reasonably draw the inference and find, in the light of surrounding circumstances, that the person in possession not only knew it to be stolen property, but also transported or caused it to be transported in interstate commerce.

The term "recently" is a relative term which has no fixed meaning. Whether property may be considered as recently stolen depends upon the nature of the property and all of the facts and circumstances shown by the evidence. The longer the period of time since the theft, the weaker the inference which may be drawn from unexplained possession.

As to each of the six counts that allege the crime of interstate transportation of a stolen motor vehicle, if you find from the evidence in this case, as to each of these six counts, beyond a reasonable doubt, that the motor vehicle described in each of the counts of the indictment was in fact stolen, and was in fact transported in interstate commerce as charged, and that, while recently stolen, the motor vehicle was in the possession of the defendant in another

state than that in which is was stolen, the jury would be justified in drawing from those facts the inference that the motor vehicle was transported, or caused to be transported, in interstate commerce, by the defendant, with knowledge that it was stolen, unless possession of the recently stolen property by the defendant in such other state is explained to the satisfaction of the jury by the facts and circumstances in evidence.

It is the exclusive province of the jury to determine whether the facts and circumstances shown by the evidence warrant any inference which the law permits the jury to draw from possession of recently stolen property. If any possession the accused may have had of recently stolen property is consistent with innocence, then the jury should acquit the defendant of such of the indictment counts as to which this would be applicable.

The guilt of a defendant may be established without proof that the accused personally did every act constituting the offense charged.

> "Whoever commits an offense against the United States, or willfully aids, abets, counsels, commands, induces, or procures its commission is punishable as a principal.
>
> and
>
> Whoever willfully causes an act to be done which if directly performed by him, or another would be an offense against the United States is punishable as a principal."

Every person who thus willfully participates in the commission of a crime may be found to be guilty of that offense. Participation is willful if done voluntarily and purposely and with specific intent to fail to do some act the law re-

quires to be done; that is to say, with evil motive or bad purpose either to disobey or disregard the law.

In order to aid and abet another to commit a crime, it is necessary that a defendant willfully associate himself in some way with the criminal venture; and that he willfully participates in it as something he wishes to bring about; and that he willfully seek by some action of his to make it succeed.

The defendant in this case is also charged in one count of the indictment herein, with the offense of transporting stolen goods in interstate commerce, in violation of section 2314, Title 18, United States Code, and section 2, Title 18, United States Code.

In this particular count 4 of the indictment in this case charges that on or about the 16th day of February, 1965, Woodrow Yokum did willfully and unlawfully transport from the U.S. Naval Supply Depot at Mechanicsburg, State of Pennsylvania, into Randolph County, State of West Virginia, in the Northern District of West Virginia, certain property belonging to the United States, to-wit, 1000 pairs of binoculars of the value in excess of $5,000, that is $165,000, said binoculars having been obtained from the said United States Naval Supply Depot by fraud, and the said Woodrow Yokum at the time of the said transportation well knew that the said binoculars belonged to the United States, and had been obtained by fraud.

To convict the defendant of this crime the United States must prove beyond a reasonable doubt that the defendant transported the property of a value of $5,000 or more, with knowledge that the property was stolen, converted or taken by fraud.

It is not necessary for the United States to prove that defendant participated in the original wrongful taking or

conversion of the property, or that he knew the value of it. Neither is it necessary to prove that he personally transported the property or knew that it would be transported. It is sufficient if he caused, motivated or induced such transportation across state lines.

A most essential element of the crime charged in count 4 of the indictment in this case is that the binoculars were stolen, converted, or taken by fraud.

The terms "stolen, converted, or taken by fraud," include any wrongful appropriation of the property of another,

This may be done by forcible taking, by taking without permission, by inducing the owner to part with the property by false pretenses, fraud or swindling, or by converting to one's own use property of another, originally possessed lawfully.

It is not necessary that such wrongful taking or conversion be done by defendant personally. The manner in which he acquired possession of such property should be considered only in determining whether he had knowledge that the property was stolen, converted or taken by fraud.

Another essential element of the crime charged in count 4 of the indictment in this case, namely, the interstate transportation of stolen property, is that the items transported must have a value of $5,000 or more. Value ordinarily means market value, or the price a willing buyer would pay to a willing seller at the time the property was stolen.

If there is no market value for the goods the jury should consider other reasonable methods of determining whether the stolen items have a monetary value equivalent to $5,000 or more. If replacement value is used as a standard, it should mean replacement at the time and place the goods were willfully taken, less depreciation in value, if any, that

occurred during the period that the property was owned by the United States, and prior to its being stolen.

In the crime of interstate transportation of stolen property, possession of property recently stolen in another state, which is not satisfactorily explained, or falsely explained by defendant, is a circumstance from which the jury may draw the inference that the defendant in possession knew that the property had been stolen.

Counts 2, 3, and 9 of the indictment in this case embrace the final category of offenses, namely, the unauthorized sale of government property in violation of section 641, Title 18, United States Code.

Count 2 of the indictment in this case charges that on or about the 14th day of October, 1966, at Randolph County, in the Northern District of West Virginia, Woodrow Yokum did willfully and unlawfully sell and convey certain property belonging to the United States, to-wit, one black 1962 model 4 door Chrysler Imperial Sedan, vehicle identification number 912-3191809, to Minter B. Roebaugh, d/b/a Beverly Auto Sales, said Chrysler Imperial Sedan having a value in excess of $100, and said Woodrow Yokum at the time of said sale well knew that he did not have the authority to sell said Chrysler, that said Chrysler was the property of the United States, and that the said Chrysler had been stolen from the United States.

Count 3 of the indictment in this case charges that on or about the 24th day of July, 1965, at Randolph County, in the Northern District of West Virginia, Woodrow Yokum did willfully and unlawfully sell and convey certain property belonging to the United States, to-wit, one 1953 International five ton wrecker, USMC number 210701, serial number 2794, model number R-201, engine number 39162, to Thurman A. Daniels, d/b/a Daniels Body Shop, said International truck having a value in excess of $100

and the said Woodrow Yokum at the time of said sale well knew that he did not have the authority to sell said International truck and that said International truck was the property of the United States, and that said International truck had been stolen from the United States.

Count 9 of the indictment in this case charges that on or about the 10th day of August, 1964, at Randolph County, in the Northern District of West Virginia, Woodrow Yokum did willfully and unlawfully sell and convey certain property, belonging to the United States, to-wit, one 1951 Ward La France Fire Truck, engine number 80457, having a value in excess of $100, and the said Woodrow Yokum at the time of said sale, well knew that he did not have the authority to sell said fire truck, that said fire truck was the property of the United States and that said fire truck had been stolen from the United States.

The applicable portion of section 641, Title 18, United States Code, is as follows:

> "Whoever without authority, sells, anything of value of the United States or of any department or agency, thereof, or any property made for the United States or any department or agency thereof; shall be guilty of an offense against the United States."

To convict the defendant of the crimes charged in these three counts of the indictment, the United States must prove beyond a reasonable doubt that the defendant sold or disposed of property of the United States without authority to do so and with knowledge that the property was owned by and was stolen from the United States.

The phrase "property of the United States" as used in the indictment in this case includes any thing of value owned by the United States or any of its departments or

agencies, or any property made for the United States or its departments or agencies.

An essential element of the crime of theft and subsequent sale of government property is the specific intent by defendant to defraud the United States by appropriating to his own use, or to the use of another, property which he knew belonged to the United States. If the defendant did not have this specific intent he cannot be found guilty of this crime. Specific intent is a question of fact to be determined by the jury from a consideration of all of the facts and circumstances in the case.

The United States must prove the value of the property stolen, because the law provides a greater penalty if the value of the property exceeds $100. Value under this law means face, par or market value, or cost price, either wholesale or retail, whichever is greater. The value of the property stolen is a question of fact to be determined by the jury.

Where a defendant has offered evidence of good reputation for truth and veracity, the jury should consider such evidence along with all the other evidence in the case.

Evidence of a defendant's reputation for truth and veracity may be sufficient to warrant an inference of good character as to those traits of character.

Evidence of a defendant's reputation, as to those traits of character ordinarily involved in the commission of the crime charged, may give rise to a reasonable doubt; since a jury may think it improbable that a person of good character in respect to those traits would commit such a crime.

You as jurors, are the sole judges of the credibility of the witnesses, and the weight their testimony deserves. A witness is presumed to speak the truth. But this presumption may be outweighed by the manner in which the witness

testifies, by the character of the testimony given, or by contrary evidence.

You should carefully scrutinize the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether the witness is worthy of belief.

Consider each witness's intelligence, motive, state of mind, demeanor and manner, while on the stand. Consider any relation each witness may bear to each side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause a jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience.

In weighing the effect of a discrepancy, consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or wilful falsehood.

If you find the presumption of truthfulness to be outweighed as to any witness, you will give the testimony of that witness such credibility, if any, as you think it may deserve.

In every crime, there must exist a union or joint operation of act and intent.

The burden is always upon the prosecution to prove both act and intent beyond a reasonable doubt.

With respect to lesser offenses, if it be shown that a person has knowingly committed an act denounced by the law as a crime, intent may be presumed from the voluntary doing of the forbidden act.

But with respect to a major crimes, such as are charged in this case, specific intent must be proved before there can be a conviction.

Specific intent, as the term itself suggests, rquires more than a mere general intent to engage in certain conduct.

A person who knowingly does an act which the law forbids, or knowingly fails to do an act which the law requires, intending with bad purpose either to disobey or disregard the law, may be found to act with specific intent. An act or failure to act is done knowingly, if done voluntarily and purposely, and not because of mistake or inadvertance or other innocent reason.

Intent may be proved by circumstantial evidence. It rarely can be established by any other means. While witnesses may see and hear and thus be able to give direct evidence of what a defendant does or fails to do, there can be no eyewitness account on the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may be intent or lack of intent to commit the offense charged.

It is reasonable to infer that a person ordinarily intends the natural and probable consequences of acts knowingly done or knowingly omitted. So, unless the contrary appears from the evidence, the jury may draw the inference that the defendant intended all the consequences as one standing in like circumstances and possessing like knowledge should reasonably have expected to result from any act knowingly done or knowingly omitted by the defendant.

In determining the issue as to intent, the jury are entitled to consider any statements made or acts done or omitted by the defendant, and all facts and circumstances in evidence which may aid determination of his state of mind.

During the course of these instructions the word "possession" has been employed. To assist your application of

the term to this case, you should know that the law recognizes two kinds of possession: Actual possession and constructive possession. A person who knowingly has direct, physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, knowingly has the power and the intention a given time to exercise dominion or control over a thing, is then in constructive possession of it.

The law recognizes also that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share the actual or constructive possession of a thing, their possession is joint.

If you find from the evidence beyond a reasonable doubt that the defendant, either alone or jointly with others, had actual or constructive possession of the respective items of property described in the several counts of the indictment in this case, then you may find that such property, considered separately, and as to each count of the indictment in this case, was in the possession of the accused within the meaning of the words "possession" as used in these instructions.

You will note that the indictment charges that the offense in each of the counts therein was committed "on or about" a certain date. It is not necessary that the proof establish with certainty the exact date of the alleged offense. It is sufficient if the evidence shows beyond a reasonable doubt that the alleged offense was committed on a date reasonably near the date alleged.

You are here to determine the guilt or innocence of the defendant from the evidence before you. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons.

So if the evidence convinces you beyond a reasonable doubt of the guilt of the defendant, you should so find, even though you may believe one or more other persons are also guilty. But if any reasonable doubt remains in your minds after impartial consideration of all the evidence, you should acquit the defendant.

As has earlier been brought to your attention, this is a multiple count indictment. A separate crime or offense is charged in each count of the indictment in this case. Each offense and the evidence applicable thereto should be considered separately.

The fact that you may find the defendant guilty or not guilty of one of the offenses charged should not control your verdict with respect to any other offense charged.

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors.

In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

You are not partisans, you are judges; judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.

Upon retiring to the jury room, select one of your number to act as foreman. This foreman will preside over your deliberations and will be your spokesman in court.

For your convenience, forms of verdict have been prepared.

There will be one verdict for each of the ten counts that remain in the indictment. Count 8 has not been eluded to or mentioned in this case, because prior to the trial of this case, the Government dismissed this count by making a motion to nollie count 8. So count 8 will not be considered by you one way or the other.

Now, the form of verdict for count 1, submitted for your convenience reads as follows: We the jury find the defendant Woodrow Yokum—guilty—not guilty of the offense charged in count number 1 of the within indictment.

As to count 2, we the jury find the defendant Woodrow Yokum—guilty—not guilty of the offense charged in count 2 of the within indictment and to further find that the value of the property mentioned in count 2 of the indictment does —does not have a value in excess of $100.

With the exception of enumerating the number 3 in the next form, the form is the same as in counts 2 and 4. It is the same as I read for the form for those two counts.

The form is the same for count 5 as was for count number 1, except it says count 5 instead of count 1 and counts 6 and 7 are the same verdict forms as I read for 1, except the numbers there are 6 and 7 instead of 1.

Count numbered 9 is the same as the count 2 verdict form that I read to you, except for the number 9 in it. Count 10 is the same as the first count and count 11 is the same as 1 and 10.

You will take these forms to the jury room and when you have reached an unanimous agreement as to your verdict, you will have your foreman strike out the inapplicable word or words, date and sign the form, state the verdict upon which you agree as to each count of the indictment in this case, and then return with your verdict to the courtroom.